

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANIEL BLACK,

Exhibit F

Plaintiff,

-vs-

Case No. 2:17-CV-00156

DAVID CLARK, et al.,

Defendants.

Examination of CAPTAIN MARK W. WITEK,
taken at the instance of the Plaintiff, under and
pursuant to the Federal Rules of Civil Procedure,
before Sarah A. Hart, RPR, RMR, Certified Realtime
Reporter, and Notary Public in and for the State of
Wisconsin, at HUSCH BLACKWELL LLP, 555 East Wells
Street, Suite 1900, Milwaukee, Wisconsin, on
May 17, 2017, commencing at 9:09 a.m. and
concluding at 9:52 a.m.

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| <p>Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 PETERSON, JOHNSON & MURRAY, S.C., by</p> <p>MR. WILLIAM F. SULTON</p> <p>3 788 North Jefferson Street, 5th Floor</p> <p>Milwaukee, Wisconsin 53202</p> <p>4 appeared on behalf of the Plaintiff.</p> <p>5 HUSCH BLACKWELL LLP, by</p> <p>MR. CHARLES H. BOHL</p> <p>6 555 East Wells Street, Suite 1900</p> <p>Milwaukee, Wisconsin 53202</p> <p>7 appeared on behalf of the Defendants.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>Page 3</p> <p>1 * * * * *</p> <p>2 I N D E X</p> <p>3 Examination By: Page</p> <p>4 By Mr. Sulton4</p> <p>5</p> <p>6 Exhibits Identified: Page</p> <p>7 Exhibit 1 - Snapshot of text messages from 18</p> <p>8 Captain Witek's phone</p> <p>9</p> <p>10 Items Requested: Page</p> <p>11</p> <p>12 Text message re: description of Mr. Black 19</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p>Page 4</p> <p>1 TRANSCRIPT OF PROCEEDINGS</p> <p>2 (Exhibit No. 1 was marked.)</p> <p>3 MARK W. WITEK, called as a witness</p> <p>4 herein, having been first duly sworn on oath, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. SULTON:</p> <p>8 Q Good morning. My name is William Sulton. As I'm</p> <p>9 sure you've figured out, I represent Dan Black in</p> <p>10 this case.</p> <p>11 Could you please state and spell your</p> <p>12 name for the record.</p> <p>13 A Sure. It's Mark W. Witek. M-A-R-K, W for middle.</p> <p>14 Last name is Witek, W-I-T-E-K.</p> <p>15 Q And what is your rank?</p> <p>16 A Captain.</p> <p>17 Q Is it okay if I call you Captain Witek?</p> <p>18 A Sure. Or Mark. Sure.</p> <p>19 Q And how long have you held the rank of captain?</p> <p>20 A Just over two years now.</p> <p>21 Q All right. So that would be in 2015?</p> <p>22 A Yes. April 19th, 2015.</p> <p>23 Q What rank did you hold before that?</p> <p>24 A Lieutenant.</p> <p>25 Q And how long did you hold that rank?</p> | <p>Page 5</p> <p>1 A Four years, maybe five.</p> <p>2 Q Okay. What rank did you hold before lieutenant?</p> <p>3 A Sergeant.</p> <p>4 Q How long did you hold the sergeant rank?</p> <p>5 A Two years maybe, three years.</p> <p>6 Q Okay.</p> <p>7 A I was also a temporary sergeant back in 2003, also,</p> <p>8 just for a ten-week period to help out.</p> <p>9 Q And what rank did you hold before your sergeant</p> <p>10 rank?</p> <p>11 A Deputy sheriff I.</p> <p>12 Q And how long did you hold that rank?</p> <p>13 A Since April 19th of '96.</p> <p>14 Q Did you hold any other rank with the Milwaukee</p> <p>15 Sheriff's Department?</p> <p>16 A No, sir.</p> <p>17 Q All right. How long have you been a</p> <p>18 law-enforcement officer?</p> <p>19 A 21 years. As of April 19th of '96.</p> <p>20 Q Have you worked for any other law-enforcement</p> <p>21 agency other than the Milwaukee County Sheriff's</p> <p>22 Department?</p> <p>23 A No, sir.</p> <p>24 Q I assume that when you were promoted to sergeant,</p> <p>25 you had some supervisory duties?</p> |

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1 A Yes.

2 Q Did you have any supervisory duties before you

3 earned the rank of sergeant?

4 A No, sir.

5 Q Can you tell me what those supervisory duties were

6 when you were sergeant?

7 A To manage the shift at approximately anywhere from

8 15 to 17 deputies on a shift with about eight to

9 nine working a day on that shift --

10 Q And as we sit here --

11 A -- oversee the shift duties.

12 Q Sure, sure.

13 Anything else?

14 A No.

15 Q And as we sit here today, are there any other

16 duties that current sergeants have that you did not

17 perform?

18 A Not that I could think of right now.

19 Q Okay. And when you earned the rank of lieutenant,

20 I imagine that that also came with some supervisory

21 duties as well, right?

22 A Yes. Yeah. It became a little more administrative

23 stuff.

24 Q Can you describe that for me?

25 A Creating shift summaries and stuff, the day's

Page 8

1 Q Okay. And then when you earned the rank of

2 captain, I assume that came with yet more

3 supervisory duties and functions?

4 A Yeah. Now I oversee the whole division at the

5 airport, the airport division. I'm responsible for

6 all three shifts, all the duties at the airport

7 right now. I oversee all of it.

8 Q Okay. And you've been doing that for about two

9 years, right?

10 A Just over two years now, yes.

11 Q Do you understand sort of the gist of this lawsuit

12 involving Dan Black and Sheriff Clarke?

13 A Yes.

14 Q Can you tell me how you became familiar with Dan

15 Black?

16 A At the time I didn't know who he was when this

17 started. I just had received a phone call from the

18 inspector, Inspector Edward Bailey, stating that

19 the sheriff -- I knew the sheriff was coming in,

20 because it's part of my duties to meet him when he

21 flies in and out, along with -- it's usually

22 myself, the inspector, a sergeant, and a canine

23 handler are usually there. When the sheriff flies

24 out and when he flies back in, it's our duties to

25 be with him at that point.

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1 events; becoming shift commander for the agency,

2 which during off-peak hours we would be assigned

3 shift commanders for the whole agency to oversee

4 the various divisions within our agency.

5 Q And what is a shift summary?

6 A Just a -- we have a log and stuff that we keep the

7 day's events that would go to, like, the inspector

8 or something of -- there's one sent out every night

9 now by our captains on our patrol division; they

10 send out a nightly report --

11 Q And when you say the "day's events" --

12 A -- the day's events.

13 Q When you say "day's events," do you mean stops,

14 arrests, tickets?

15 A No.

16 Q What do you mean?

17 A That might be in there, but I don't send that out

18 at my division. But the captains out at patrol do

19 send that one out.

20 Q And as we sit here today, do you believe that the

21 folks that currently hold the rank of lieutenant

22 perform duties other than what you performed when

23 you were lieutenant?

24 A No, I don't think so. I think they're about the

25 same.

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1 Q And were those duties assigned by the sheriff?

2 A Yeah. That's what he wants, yes. So I guess yes.

3 Q Okay. And can you tell me about your conversation

4 with Inspector Bailey?

5 A Yeah. It was a very brief conversation on the

6 phone. He called my phone; I was still at home

7 getting ready to come in. He told me that -- he

8 might have asked if I was going in; I said, yes.

9 Because Inspector Bailey couldn't be there that

10 day, okay? Whatever arrangements he had, he

11 couldn't be there. So I said, yes, I was getting

12 ready.

13 And he told me that the sheriff was

14 coming in and that there was a -- I can't remember

15 the exact wordage, but there was a problem between

16 the sheriff and a person on a plane or something;

17 there was an issue on the plane between the sheriff

18 and somebody. But the sheriff did not want us to

19 arrest the guy, just FI him. Unless there was a

20 problem, then we would arrest, you know, if the guy

21 became a problem. But just FI him. And I said,

22 okay.

23 Q When you said that he called your phone because you

24 were at home --

25 A Yes.

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1 Q -- are we talking about a cell phone? Are we
2 talking about a landline?
3 A **Cell phone.**
4 Q Is this personal cell phone?
5 A **Personal cell phone.**
6 Q Do you have a work cell phone as well?
7 A **Yes. I'm pretty sure it was my personal cell**
8 **phone. I should backtrack. I think it was my**
9 **personal cell phone that he called, yeah.**
10 Q Do you know if that conversation was recorded?
11 A **No, it was not recorded. My phones aren't**
12 **recorded.**
13 Q Sure. What is --
14 A **But I didn't know the person's name or anything at**
15 **that point. I had no idea what had occurred. The**
16 **sheriff's on a plane; I'm not able to talk to him.**
17 **Inspector Bailey, I don't know if he had ability to**
18 **talk to him. I have no idea.**
19 Q And when you said "FI him," what do you mean by
20 that?
21 A **Field interview.**
22 Q And what is a field interview?
23 A **See if -- we talk to somebody, gather some**
24 **information as to what happened, a reasonable --**
25 **you know -- we -- my understanding is something**

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1 A **No. That's all done through the Milwaukee County**
2 **Sheriff's Training Academy.**
3 Q Is there any field-training opportunity?
4 MR. BOHL: Object to the form of the
5 question. Do you understand it?
6 **THE WITNESS: No. Field training, no. I**
7 **mean, do we teach it at the airport as part -- no,**
8 **they get all that training in the academy prior to**
9 **them going to another division or assigned**
10 **someplace. That's all done in the training**
11 **academy. And there's copies of the FI card in**
12 **there. They're standard. We all have the same**
13 **cards.**
14 BY MR. SULTON:
15 Q Sure, sure.
16 But, I mean, you're a captain at the
17 airport.
18 A **Yes.**
19 Q I assume folks come out of the academy and they're
20 assigned to, you know, a division that you control,
21 right, unit or -- for lack of a better term?
22 A **Yeah, they do. I mean, they go to another**
23 **division. It's rare we get them at the airport**
24 **first, though. It's usually in the courts or out**
25 **at patrol.**

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1 **occurred, and we didn't know what. But based on**
2 **the phone call from Inspector Bailey, I believe,**
3 **and his conversation with the sheriff, that we had**
4 **reason to believe something had occurred.**
5 Q And what did you believe had occurred based on your
6 conversation with Inspector Bailey?
7 A **I don't know what had occurred, but I believe that**
8 **possibly something that he could be arrested for,**
9 **the other person, because the sheriff said, don't**
10 **arrest him at this time.**
11 **So I don't know if the person was maybe**
12 **impaired, disorderly. I had no idea. But it led**
13 **me to believe that don't arrest him at this time**
14 **meant something possibly criminal could have**
15 **happened. But the sheriff was using discretion; he**
16 **didn't want us to make an arrest at that time.**
17 Q Sure, sure.
18 If I could just back up to this
19 "FI/field interview" phrase, because I'm not sure
20 that I understand it.
21 As a part of your duties as captain, do
22 you teach or train subordinates on field
23 interviews?
24 A **That's done through our academy.**
25 Q Have you ever taught any subordinates?

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1 **But we haven't hired deputies now -- it**
2 **was 13 years we haven't hired a deputy sheriff**
3 **until -- when was it, two years ago we hired our**
4 **first class in 13 years. So we hadn't had any new**
5 **deputies, if you follow me there.**
6 Q Sure, sure.
7 So in 2013 you hired this new class?
8 A **2015.**
9 Q Sorry. Your math is better than my math.
10 A **Yeah, two years ago. And then we perhaps got a few**
11 **of them, but, again, their training was all**
12 **provided by the training academy, our training**
13 **academy. And they get reassigned to the airport**
14 **and -- yeah, we work with the new people, yes, but,**
15 **I mean, we don't have a thing where we take them**
16 **out and teach them how to FI somebody. That's**
17 **already done. They should have that training prior**
18 **to getting to us.**
19 Q Okay. That makes sense. Okay.
20 So you didn't have any information from
21 Inspector Bailey as to what occurred on the
22 airplane?
23 A **No, sir.**
24 Q My understanding from your previous testimony was
25 that part of your job duties is to know when

Page 14

1 Sheriff Clarke is coming in, right?

2 **A Yes.**

3 Q So when you received this call from Inspector

4 Bailey, you were getting ready to go to the

5 airport?

6 **A Yeah. Yeah. I was at home, and I think my phone**

7 **rang and it was Inspector Bailey.**

8 Q How long does it take you to get from your home to

9 the airport?

10 **A 15, 20 minutes maybe.**

11 Q I would assume that if it takes you 15, 20 minutes

12 to get to the airport, that you would want to get

13 there before --

14 **A Yes.**

15 Q -- Sheriff Clarke arrives, right?

16 **A Yes.**

17 Q And in general, how much before do you get there?

18 **A Oh, I can't -- that varies, because if I have stuff**

19 **to do, I'll go in earlier before he arrives.**

20 Q Sure. Do you remember on that day --

21 **A No.**

22 Q -- whether you got in earlier?

23 **A No.**

24 Q Is there any way to determine when you got to the

25 airport?

Page 16

1 Q Sure.

2 **A But my extent -- I'm not by any means a computer**

3 **whiz or a cell-phone person.**

4 Q Sure, sure.

5 Do you know how long it takes to fly

6 from, say, Chicago to Milwaukee?

7 **A If I'm guessing --**

8 MR. BOHL: You don't have to guess,

9 Captain.

10 BY MR. SULTON:

11 Q Yeah, again, I'm not asking you to guess.

12 **A Again, are you talking about from when they close**

13 **the jetway door, or are you just talking in-flight**

14 **time? I mean, there's a difference there.**

15 Q Sure.

16 **A I mean, you know, because anytime they pull the**

17 **jetway back and that plane is loaded, it could be**

18 **another 20 minutes before they take off. But I**

19 **would estimate, I don't know, total time maybe 40**

20 **minutes from when they close that jet-bridge door**

21 **to takeoff and landing. But I'm not sure.**

22 Q Sure. When you received this telephone call from

23 Inspector Bailey, did you believe that whatever

24 occurred on that airplane occurred in Milwaukee

25 County?

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1 **A No.**

2 Q When is the --

3 **A I usually like -- if I get there, I like to get**

4 **there -- just in my mind I can think probably**

5 **anywhere from a half hour to an hour beforehand if**

6 **I can, you know, because I change into my uniform.**

7 **And I don't wear my uniform home; I keep everything**

8 **at work. So I change, and then I try and watch the**

9 **flight online to see where the flight is so I know**

10 **what time that plane is going to be landing.**

11 Q When you say, "watch the flight," do you mean that

12 little screen that shows the airplane and where

13 it's traveling?

14 **A Yeah, exactly, FlightAware. Yes.**

15 Q So is it fair to say that you probably arrived at

16 the airport between 30 and 60 minutes before the

17 flight arrived?

18 **A I would say so, but I couldn't guarantee that. But**

19 **that's probably fair.**

20 Q But we know for certain that you got there before

21 the airplane got there, right?

22 **A Yes.**

23 Q And how familiar are you with FlightAware?

24 **A I just punch in the airline and then the flight**

25 **number and track the flight.**

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1 **A No, I don't believe it -- no. My understanding was**

2 **it happened down -- I think the flight was from**

3 **Dallas, I think. You said Chicago. I don't know**

4 **what Chicago had to do with this.**

5 Q Sure, sure. And that's what I'm trying to get at.

6 How did you arrive at -- how did you

7 learn that whatever happened, happened in Dallas?

8 **A The sheriff said -- not the sheriff. Bailey said**

9 **something happened on a plane. So it -- "on the**

10 **plane" means it either happened in Dallas or in**

11 **flight. And I'm guessing they were on the plane if**

12 **they had a conversation, because I don't think they**

13 **would use their cell phones when they're on the**

14 **plane. So I believe they had to be on the plane,**

15 **probably at the gate there. I'm not sure.**

16 I didn't ask him that. I'm just

17 guessing it happened down in Dallas if that's where

18 they -- the original flight started there.

19 Q Sure. But when you're having this conversation

20 with Inspector Bailey, who I believe is a superior,

21 right?

22 **A Yes. Inspector.**

23 Q So when you're having this conversation with

24 Inspector Bailey, you didn't believe that this

25 occurred in Wisconsin?

Page 18

1 **A No.**
 2 Q If I could show you what's been marked as Exhibit 1
 3 here, have you seen Exhibit 1 before?
 4 **A That's this one here?**
 5 Q Yes.
 6 **A Yes. That's my cell phone snapshot that I provided**
 7 **to Inspector Bailey.**
 8 Q Is this your personal cell phone?
 9 **A Yes.**
 10 Q Can you tell me -- if you look towards the top of
 11 the page, it says, D. Clarke. Do you see that?
 12 **A Yes.**
 13 Q And that's for Sheriff David Clarke, right?
 14 **A Right.**
 15 Q And the first message is, "Are you working?"
 16 Right?
 17 **A Yes.**
 18 Q And that's from David Clarke, correct?
 19 **A Yes.**
 20 Q The second message is, "Yes, I just spoke to
 21 Inspector Bailey, and he informed me of what was
 22 going on."
 23 **A Correct.**
 24 Q That's you, right?
 25 **A Yes.**

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1 **when this -- I seen this afterwards, because I**
 2 **didn't even know I had this text until after I**
 3 **spoke to Inspector Bailey. Because I had my phone**
 4 **in my hand, and then I seen I had a message on**
 5 **there.**
 6 MR. SULTON: Sure. Mr. Bohl, maybe we
 7 can take a break and just print it off. You would
 8 have an opportunity to look at it, and then I won't
 9 have to re-call him or anything.
 10 MR. BOHL: Why don't you just ask him
 11 what it says. We'll give it to you. I just want
 12 to get this over with.
 13 **THE WITNESS: White male, thirties,**
 14 **wearing a safari hat is all it says.**
 15 MR. SULTON: I mean, it's going to take,
 16 like, a second to copy this thing.
 17 MR. BOHL: I can see the captain is
 18 following my instructions.
 19 **THE WITNESS: Oh. Do you want me to --**
 20 MR. BOHL: Sure. Go ahead.
 21 **THE WITNESS: No, when you said, tell him**
 22 **what it said, I thought you wanted me to --**
 23 MR. SULTON: I mean, if we take a quick
 24 break and just copy it, I mean, it's going to take
 25 a minute. This deposition is not going to take

Page 19

1 Q And we've talked about what Inspector Bailey told
 2 you, right?
 3 **A Yes. I mean, we talked about it, yes.**
 4 Q Yeah. I mean today.
 5 **A Okay, yes.**
 6 Q Me and you today during this deposition talked
 7 about everything that Inspector Bailey told you,
 8 right?
 9 **A Yes.**
 10 Q Is there anything that Inspector Bailey told you
 11 that we have not talked about?
 12 **A No, other than he provided me a text of what the**
 13 **guy was wearing after the fact -- or a description**
 14 **of the subject, white male, thirties, wearing -- I**
 15 **think he said safari hat. That was it.**
 16 Q Do you still have that text message?
 17 **A Yes.**
 18 MR. SULTON: Could you produce it?
 19 MR. BOHL: Sure.
 20 **THE WITNESS: Do you want to see it?**
 21 MR. BOHL: Not right now. We're not
 22 going to go into your phone right now, but we will
 23 produce it.
 24 **THE WITNESS: That was the extent of my**
 25 **conversation with Inspector Bailey prior to -- or**

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1 very long.
 2 **THE WITNESS: "W/M" for white male,**
 3 **"thirties, safari hat," whatever that means, "in**
 4 **coach." That's exactly what it says.**
 5 BY MR. SULTON:
 6 Q Is there any other message he sent you?
 7 MR. BOHL: "He," being Bailey or Clarke?
 8 BY MR. SULTON:
 9 Q Is there any other message that Bailey -- Inspector
 10 Bailey sent you?
 11 **A Yeah, I got several on my phone, but from days**
 12 **after that and stuff. I mean --**
 13 Q Sorry, relating to Dan Black.
 14 **A He just says, "Copy" -- I'm sorry. I said, "Copy."**
 15 **And afterwards I said, "Everything's good, he's on**
 16 **his way." And just a picture he sent me. That was**
 17 **it.**
 18 Q A picture of what?
 19 **A Just a picture. Not of like --**
 20 Q Sure.
 21 MR. BOHL: Does it have anything to do
 22 with this case?
 23 **THE WITNESS: Just when I --**
 24 BY MR. SULTON:
 25 Q Is it like an emoji or something?

Page 22

1 **A I guess.**

2 **Q All right. Back to Exhibit 1 here, is there**

3 **anything else that you and Inspector Bailey**

4 **communicated?**

5 **A Our conversation was brief, I think, and exactly**

6 **what I told you. That was it.**

7 **Q Sure. So then the third message on Exhibit 1 says,**

8 **"We will meet you."**

9 **That's also you, right?**

10 **A Right. That's just -- we're always there to meet**

11 **him. So I didn't want him to think -- you know,**

12 **we're always there to meet him. And that's it.**

13 **Q And this third message that says, "10-4. Just a**

14 **field interview. No arrest unless he becomes an**

15 **asshole with you guys."**

16 **MR. BOHL: Your guys.**

17 **THE WITNESS: Your guys.**

18 **BY MR. SULTON:**

19 **Q "Question for him is why he said anything to me.**

20 **Why didn't he just keep his mouth shut. Follow him**

21 **to baggage and out the door. You can escort me to**

22 **carousel after I point him out."**

23 **A Correct.**

24 **Q That's Sheriff Clarke, right?**

25 **A Yes. And pretty much that's almost, I think,**

Page 24

1 **sheriff if he wanted a report. He said, no, just**

2 **have the deputies make daybook entries.**

3 **And Sergeant Sajdowitz -- I went outside**

4 **with the sheriff with his bag, and he was going to**

5 **wait outside by his vehicle, which normally he'll**

6 **wait inside, but that day he decided to wait**

7 **outside I'm guessing, because whatever happened, he**

8 **didn't want things to escalate; it was probably**

9 **better for him to remove himself from the carousel**

10 **in case the subject did -- whatever the issue was**

11 **wouldn't escalate down in baggage. That's why I**

12 **believe why he waited outside.**

13 **So I went back inside to the carousel**

14 **with Karen Mills, and we waited for the sheriff's**

15 **bags. We got his bags, loaded his bags, and that**

16 **was it.**

17 **Q What did you do after that?**

18 **A Went back to the office. Deputy Paull and Hartung**

19 **came in there. I told them the sheriff said just**

20 **make daybook entries.**

21 **Q Did you have any conversation with them about the**

22 **field interview?**

23 **A Might have been a brief conversation, but --**

24 **Q Do you remember it?**

25 **A I think just that they said that the guy had**

Page 23

1 **exactly what Ed Bailey said, you know, to what**

2 **you're reading right there.**

3 **Q All right. Did you go to the gate to meet Mr. --**

4 **Sheriff Clarke?**

5 **A Yes.**

6 **Q Tell me what happened.**

7 **A When I got to work, myself, Sergeant Sajdowitz,**

8 **Karen Mills who is the canine handler, along with**

9 **her dog, Steve Paull, and Deputy Hartung went up to**

10 **the gate, and we waited for the plane to pull up.**

11 **Once the sheriff came off the plane, he**

12 **walked up to us. I think we saluted him. I might**

13 **have grabbed his bag; I don't remember. We waited**

14 **I can't tell you how long, briefly, because I think**

15 **Mr. Black came off shortly after the sheriff. And**

16 **I think Sergeant Sajdowitz asked the sheriff if**

17 **that was him, and I think the sheriff identified**

18 **him as the subject. And Deputy Paull and Hartung,**

19 **then, were going to do a field interview, and**

20 **Sergeant Sajdowitz, myself, and Karen Mills left**

21 **with the sheriff to escort him down to the baggage**

22 **carousel.**

23 **Q And what did you do after that?**

24 **A We went downstairs to the baggage carousel. The**

25 **sheriff said he would wait outside. I asked the**

Page 25

1 **questioned the sheriff on what he was wearing. And**

2 **I think that was probably it. And then I think I**

3 **changed and went home.**

4 **Q Do you know what a Terry stop is?**

5 **A Yeah. Reasonable suspicion, you know, to pat**

6 **somebody down -- question them, pat them down.**

7 **Q Just so I understand, your understanding of a Terry**

8 **stop is you need reasonable suspicion to pat**

9 **somebody down?**

10 **A Question them and pat them down, yes.**

11 **Q Do you believe that a field interview is different**

12 **from a Terry stop?**

13 **A Yeah, I believe there was -- I believe something**

14 **had happened on the plane, okay? And the sheriff's**

15 **text message questioned why he said anything to me,**

16 **why he didn't just keep his mouth shut led me to**

17 **believe that something kept going on. You know,**

18 **why he didn't just keep his mouth shut, so that**

19 **tells me this is going on. I don't know.**

20 **So I had reason to believe based on, you**

21 **know, the sheriff's got 30-some years**

22 **law-enforcement experience, Inspector Bailey's got,**

23 **you know, 25 years, 26 years. These guys are**

24 **calling me telling me something happened, and they**

25 **just wanted the guy FI'd.**

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1 I know the sheriff has had threats on
 2 planes in the past. There was one where there was
 3 an arrest made. There was another incident I
 4 believe down in Dallas where two females weren't
 5 allowed to board because there was an incident
 6 involving them and the sheriff down in Dallas, and
 7 that flight was delayed. And I got that
 8 information from Inspector Bailey. And that was
 9 prior to this incident. This was right after the
 10 incident down in Fort Lauderdale where the
 11 gentleman got to his bag and pulled out a gun and
 12 started shooting people down there.
 13 So I know the sheriff has had threats
 14 made against him. So I don't know if there was a
 15 threat made or what was said, I didn't know. But I
 16 believe there was something that had occurred that
 17 caused the sheriff to have some concern.
 18 Q To be clear, Inspector Bailey directed you to FI
 19 Dan Black, right?
 20 A Yes, but then so did the sheriff afterwards. But
 21 it first came from Inspector Bailey, yes.
 22 Q Sure. Both Inspector Bailey and Sheriff David
 23 Clarke are your superiors, right?
 24 A Yes.
 25 Q And essentially they told you what to do, right?

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1 reasonable suspicion that somebody is armed and
 2 dangerous in order to conduct a frisk, right?
 3 A Yes.
 4 Q And you agree with me that you need reasonable
 5 suspicion to stop somebody to question them, right?
 6 A Yes.
 7 Q And so --
 8 A Unless it's consensual and we ask somebody if we
 9 can talk to them and that's fine, you know,
 10 consensual encounter.
 11 Q Right. But you understood as it related to Dan
 12 Black that there was not consent, right?
 13 MR. BOHL: Object to the form of the
 14 question. Lacking foundation. It's vague. It's
 15 argumentative.
 16 THE WITNESS: I didn't question him, so I
 17 don't know.
 18 BY MR. SULTON:
 19 Q Okay. But you agree with me that in order to stop
 20 someone to question them, you need reasonable
 21 suspicion?
 22 A And I believe we had it in this case here based on
 23 my conversation with Inspector Bailey and the
 24 sheriff's text message. Yes, I believe we had
 25 that.

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1 A Yes.
 2 Q And what I want to know is -- because I'm not
 3 clear, right?
 4 A Okay.
 5 Q -- whether you believe that you needed reasonable
 6 suspicion to conducted a field interview or not.
 7 A Well, like I said, I believe I had it based on what
 8 they had told me.
 9 Q Sure. And I'm not saying --
 10 A Right.
 11 Q -- did you or did you not have it. What I want to
 12 know is in general, right, the term "field
 13 interview," do you believe that as you guys use
 14 that term, that that means you need reasonable
 15 suspicion to stop somebody?
 16 A I don't know if it's the same as, like, a Terry
 17 stop reasonable suspicion. I believe that perhaps
 18 either a crime was committed or may be committed,
 19 okay?
 20 Q Sure. Well, I want to make sure that we're talking
 21 about the same thing, okay, because I'm not sure.
 22 You agree with me that you need to have
 23 probable cause to arrest somebody?
 24 A Yes.
 25 Q All right. You agree with me that you have to have

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1 Q Let's focus on the text message, right? It's
 2 broken down in four sentences. The first sentence
 3 says, "Just a field interview. No arrest unless he
 4 becomes an asshole with your guys."
 5 A Correct.
 6 Q What about that sentence led you to believe that
 7 there was reasonable suspicion that Mr. Black was
 8 planning a crime, had committed a crime, or was
 9 committing a crime?
 10 A Something on the plane between him and --
 11 Q I'm saying --
 12 A You're asking me about that one sentence, right?
 13 Q Right. What about that one sentence?
 14 A I believe that -- he's saying, "unless he becomes
 15 an asshole with your guys." Does that mean he was
 16 an asshole with the sheriff? I don't know. I
 17 wasn't on the plane, and I wasn't able to
 18 communicate with him.
 19 Q Is assholism a crime?
 20 A No, and we wouldn't arrest him for that either. I
 21 mean, what's an asshole? If the deputies approach
 22 him and he didn't want to talk to them, might I
 23 think somebody might be an asshole? Yeah. But is
 24 that reason to arrest them? No. But if they
 25 become disorderly, you know, they start punching a

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1 wall, cussing out in a public place, you know,
 2 causing a big disturbance, then that's the
 3 difference, okay? That's what I took that to mean.
 4 But him not wanting to talk to us,
 5 that's not being an asshole, anything that we would
 6 arrest somebody for. That wouldn't happen. We've
 7 never done that, and we wouldn't do that.
 8 Q If you look, again, at this text message, the --
 9 where it says, "Question for him is why he said
 10 anything to me. Why didn't he just keep his mouth
 11 shut."
 12 Is there anything in there that suggests
 13 to you that Mr. Black committed a crime, was
 14 planning a crime?
 15 A Well, I'd have to put that in with the first
 16 sentence where it says "asshole." What happened on
 17 that plane? Was he disorderly on the plane? You
 18 know, so I have to look at the whole thing and not
 19 just the second sentence, because the first one
 20 tells me, okay, perhaps this guy was an asshole on
 21 the plane. And I don't know what that means. I
 22 couldn't communicate with the pilot, the flight
 23 attendants, or the sheriff. So I believe
 24 something, again, occurred on the plane, but
 25 without being able to communicate with them --

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1 yeah.
 2 BY MR. SULTON:
 3 Q Because I want to be clear, because right now --
 4 A So my understanding is yes, if it happens somewhere
 5 else and it lands in Milwaukee, because it happened
 6 on a plane we can still deal with it there.
 7 We get a number of -- and stop me if you
 8 have to. But we get diverted flights where it
 9 didn't necessarily happen in the state of Wisconsin
 10 but somewhere else, but it gets diverted here, and
 11 we can take police action here, correct.
 12 Q And when you say, "on the plane," you mean in the
 13 air?
 14 A Right, or -- yes, in the air, yes.
 15 Q And just so I'm clear about your role in this
 16 organization -- because I'm not clear -- are you
 17 the top-ranking official at the airport?
 18 A Yes.
 19 Q All right.
 20 A And I answer to a deputy inspector and inspector
 21 and the sheriff.
 22 Q Okay. But my understanding is that the sheriff is
 23 the top guy?
 24 A Yes.
 25 Q The inspector is beneath him?

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1 something happened.
 2 Q But more specifically, you believed that something
 3 occurred on the plane outside the state of
 4 Wisconsin, right?
 5 A Yes.
 6 Q And you understand --
 7 A And according to the D.A.'s office, if it happens
 8 on a plane, we have jurisdiction if the plane lands
 9 in Milwaukee.
 10 MR. BOHL: Captain, just answer the
 11 question.
 12 THE WITNESS: Okay.
 13 BY MR. SULTON:
 14 Q Sure. Well, let's talk about that. Which district
 15 attorney's office are we talking about?
 16 A The Milwaukee District Attorney's Office. We've
 17 had -- being at the airport for a number of years,
 18 that's the direction that we've been given, that if
 19 it does happen -- but then on the other hand, we've
 20 had D.A.s that didn't want to charge something,
 21 because it didn't -- you know, so that's --
 22 Q Sure. I want to talk about that, because --
 23 MR. BOHL: Were you done with your
 24 answer?
 25 THE WITNESS: I'm done with my answer,

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1 A Yes.
 2 Q And then the deputy inspector is beneath him?
 3 A Yes.
 4 Q And then you've got captains?
 5 A Yes. We have two inspectors and I guess, like,
 6 four deputy inspectors. I'm not sure.
 7 Q But you're basically --
 8 A Responsible for the airport division, yes, captain.
 9 Q All right. So what I want to know is, how did you
 10 learn that you had jurisdiction to deal with
 11 something that happens on an airplane? I know you
 12 said that you got it from the district attorney's
 13 office, and what I want to know is, is this a
 14 memorandum or a conversation? I mean, what are we
 15 talking about?
 16 A No, it was just a conversation that we had. I
 17 think we had presented a case, I don't know, many
 18 years ago.
 19 Q Have you ever had any training on what your
 20 jurisdiction is?
 21 A No. But if it happens on a plane and it lands in
 22 Milwaukee, we're taking police action.
 23 If somebody assaulted you on the plane
 24 and you were coming from Chicago and you were still
 25 over the state of Illinois, when it lands in

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1 Milwaukee, we're not going to make the plane go
2 back to Illinois or we're not going to not do
3 anything because it didn't happen here. We're not
4 going to do that.
5 Q Sure. But my question was --
6 A And I think that's the expectation.
7 Q -- about your training.
8 A Yes.
9 Q Wisconsin does require you to have 24 hours of
10 training a year, doesn't it?
11 A Yes.
12 Q And I imagine that you've kept up with your
13 training throughout your career?
14 A Yes.
15 Q Which -- when did it begin, in the '90s?
16 A Yes. '96.
17 Q So you've had at least 24 hours of training every
18 year since the '90s?
19 A But we haven't had specific training as to when
20 a -- in regards to an aircraft coming in and -- or
21 where it departed and, you know, do we have
22 jurisdiction when it comes in here. Our
23 understanding is yes, we do.
24 Q You do know what I mean by jurisdiction, though,
25 right?

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1 assigned, you know, to come upstairs.
2 And I don't remember what their
3 assignments were that day. They might have been --
4 if we have seven to nine deputies working at the
5 airport, each one is responsible for certain areas.
6 We have mobile squads patrol the perimeter and the
7 inside fence area of the airport; we have deputies
8 assigned to baggage and ticketing; we have deputies
9 assigned to the concourse. And so --
10 Q So in general, it's -- I think you said it would be
11 you; a canine unit, which is a person and a
12 handler; and another officer. Right?
13 A And the inspector.
14 Q And the inspector. So it's normally those four?
15 A Four.
16 Q Now, the inspector was unavailable, so you picked
17 up the other two deputies?
18 A No. We asked the other two deputies to come up
19 there to conduct a field interview.
20 Q Oh, I see. So --
21 A So I showed Deputy Paull -- that's what I was
22 getting at. I contacted Sergeant Sajdowitz prior
23 to me coming to the airport just to tell him, hey,
24 this is what I was told by the inspector and a text
25 message I got from the sheriff. And I told him I

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1 A Yes.
2 MR. BOHL: Object to the form of the
3 question. That's obnoxious.
4 BY MR. SULTON:
5 Q Do you have jurisdiction to arrest someone in
6 La Crosse?
7 A No. I wouldn't. I would inform the authorities
8 there and just make myself a good witness.
9 Q And how do you know that?
10 A Because I'm a Milwaukee County sheriff's deputy. I
11 don't work in La Crosse. I'm not up there making
12 arrests.
13 Now, if we were in a pursuit and we left
14 Milwaukee County, then that changes things.
15 Q Did you communicate with any other officers prior
16 to going to the gate?
17 A Yeah, Deputy Paull and Sergeant Sajdowitz. I think
18 I had contacted Sergeant Sajdowitz after receiving
19 a call and text message from the sheriff. Sergeant
20 Sajdowitz was the on-duty supervisor at the airport
21 at that time, and I informed him of, you know, just
22 what I was told from Inspector Bailey and the text
23 message from the sheriff.
24 Q Okay.
25 A And then I -- Deputy Paull and Hartung were

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1 would be in as I always am to meet the sheriff.
2 Q Do you know whether your conversations with Paull
3 and Hartung were recorded?
4 A No, they weren't on the phone. This was Sergeant
5 Sajdowitz I spoke to on the phone.
6 Q Okay.
7 A So then when I got to the airport, I didn't speak
8 to Deputy Paull, I think, prior to going up to the
9 gate -- I mean, I'm sorry, I spoke to Deputy Paull.
10 And I just showed him, I said, Paull, this is the
11 only information I know right now from the sheriff,
12 this is the text I got. And I showed him my text.
13 And I didn't speak to Deputy Hartung I
14 don't believe. Maybe at the gate we might have
15 talked about stuff, but I don't remember, you know.
16 Might not even be relevant to any of this; it might
17 have just --
18 Q Sure. You just don't remember whether it's
19 relevant or not?
20 A Yeah.
21 Q Is there anything about your conversations with
22 Paull or Hartung that we haven't talked about?
23 A No. I just told him this is all I know, this is
24 all I have. And that was just with Deputy Paull.
25 And, you know, I'm sure Hartung was probably aware

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1 of it at this point. He was contacted I think by
 2 our dispatch, and he was dispatched to go up there
 3 to the gate with Deputy Paull.
 4 Originally, it might have been Deputy
 5 Alex Colon that was dispatched up there. But
 6 Inspector Bailey had dropped off the sheriff's car
 7 earlier in the morning, because he couldn't be
 8 there for the flight. So instead of sending Deputy
 9 Colon, who was a second-shift deputy, up there, we
 10 reassigned him to just take the sheriff's car and
 11 pull it over onto the ticketing drive but the
 12 baggage side.
 13 I don't know if you're familiar with our
 14 airport. You have two drives; one's arrivals and
 15 one's departures. So if you come in on departures,
 16 on the other side of the road that's the back side
 17 of baggage claim. So we normally stage the
 18 sheriff's car there and have a deputy sit with his
 19 car. And that's where we had Deputy Colon wait
 20 with the sheriff's car while we went --
 21 Q And that's underneath?
 22 A Yes. Yes, exactly. Underneath the overhang there.
 23 And the rest of us, we went upstairs.
 24 But, like I said, it's normally the
 25 inspector, myself, the canine with her dog, and the

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1 Mr. Black took his ID?
 2 A I am now. But at the time that they did, no, I
 3 didn't know that.
 4 Q Is that standard protocol for a stop?
 5 A When we'll talk to somebody, we'll ask if we can
 6 see their ID. Just like on traffic stops, you
 7 know, if I ask a passenger, "Do you mind if I see
 8 your ID," and they give us their ID, yeah. What we
 9 like to do is just know who we're talking to.
 10 Q Is it standard to run a wanted or warrant check?
 11 A Yeah. When we get that information, yes.
 12 Q And you're aware that that's what happened to
 13 Mr. Black?
 14 A Yes.
 15 Q Do you know where that wanted or warrant check is?
 16 A What do you mean?
 17 Q Well, when you run a wanted or warrant check, it's
 18 run through a computer system, right?
 19 A Yeah. On the computer, yeah. We would have ran
 20 that in the dispatch, yeah.
 21 Q And there's a record created of that being run,
 22 right?
 23 A Yes, there should be, yes, with the State, yes.
 24 Q Do you know where that record is kept?
 25 A No. I mean, we don't keep a paper record of it,

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1 sergeant. There's usually four of us that escort
 2 the sheriff in and out any time he's at the
 3 airport.
 4 Q Did you direct any of the deputies as to where they
 5 should conduct --
 6 A No, sir.
 7 Q -- the field interview?
 8 A No, sir.
 9 Q Now, Captain Witek; is that right?
 10 A Witek.
 11 Q Sorry. Captain Witek. Sorry.
 12 You've been a law-enforcement officer
 13 for a long time, right?
 14 A Um-hmm.
 15 Q And some people are just jerks, right, and they'll
 16 say mean things to law-enforcement officers just
 17 because they wear the badge, right?
 18 A Yes.
 19 Q You don't always stop those people, right?
 20 A We have to have a thick skin.
 21 Q And some people are even, in Sheriff Clarke's
 22 words, assholes, right?
 23 A Um-hmm. Like I said, that's not reason enough to
 24 arrest them.
 25 Q Were you aware that the deputies that stopped

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1 no, but I'm sure you could get that from the State
 2 showing that we ran it, you know, through NCIC
 3 and -- in the state of Wisconsin, yes. I mean, we
 4 don't print that all out, no.
 5 Q Sure. But it's possible to print it out?
 6 A Oh, yeah, definitely it is. But we don't always
 7 print them out. We would be wasting paper if
 8 somebody's not wanted and we don't need that. Why
 9 print it just to shred it? So I don't know if
 10 anything was printed that day. I don't know.
 11 Q Is that standard for a field interview to get
 12 someone's ID and run a wanted or warrant check?
 13 A Yes. I would say we do that, yes.
 14 Q Did you direct any of the deputies to --
 15 A To do that?
 16 Q -- to take Mr. Black's ID and run a wanted or
 17 warrant check?
 18 A No.
 19 Q Did you review any of the daybook entries from
 20 Deputies Paull or Hartung?
 21 A Since this incident, I've looked at them, we
 22 reviewed -- I looked at them yesterday with
 23 Mr. Bohl here when we were provided the packet,
 24 yeah.
 25 Q Okay. So you didn't have any reason to look at

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1 them before then?

2 **A I did when I -- I take that back.**

3 **When the county auditor asked for the**

4 **information and Inspector Bailey told me to obtain**

5 **the daybook entries and provide him the information**

6 **so he could send it to the county auditors, yes.**

7 Q That's the only time you looked at the daybook

8 entries?

9 **A Yeah. Yeah. I didn't look at them that day or**

10 **after that, yeah.**

11 Q And presumably, that's because you had a

12 conversation with the deputies, right?

13 **A Yeah. Just told them to make daybook entries, yes.**

14 Q Have you had any conversation with the county

15 auditor's office about their investigation?

16 **A Yeah, I spoke to -- I don't remember -- his last**

17 **name I think was Hart. And that was just -- he**

18 **was -- the information he wanted I don't think I**

19 **was able to get him everything, because the deputy**

20 **was on vacation. So I told him as soon as I would**

21 **get it -- I believe that was my conversation with**

22 **him -- I would send him everything.**

23 Q Which deputy was that?

24 **A I don't remember. We gave them everybody that was**

25 **working that day. They asked for everybody's, not**

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1 Q Above your pay grade?

2 **A It's above my pay grade.**

3 Q I hear you.

4 It's my understanding that Inspector

5 Bailey has since retired?

6 **A Yes.**

7 Q Do you know when he retired?

8 **A March 30th, I think. I believe it was March 30th,**

9 **but I'm not sure. I think. Of this year.**

10 Q All right. Earlier I think you said you had talked

11 to a Deputy Sajdowitz?

12 **A Sergeant Sajdowitz.**

13 Q Sergeant Sajdowitz.

14 **A Sajdowitz.**

15 Q By phone?

16 **A Yes, by phone.**

17 Q And do you know if that call was recorded?

18 **A No, I don't think so. I think I called him on his**

19 **personal phone. I don't remember. Because if you**

20 **call the supervisor's number and he's in the**

21 **office, deputies never answer it. So I know if I**

22 **want to get a hold of him, I'll call him on his**

23 **personal phone because they don't have agency cell**

24 **phones.**

25 MR. SULTON: Okay. All right. That's

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1 **just the ones involved with this, but everybody**

2 **working that day, I think. Whatever the**

3 **information was, I eventually sent it to Inspector**

4 **Bailey.**

5 Q Did Mr. Hart ever ask to interview you?

6 **A Yes. But I wasn't there when he asked, so I didn't**

7 **speak with him that day. I had spoken to Inspector**

8 **Bailey stating -- telling him that there was a**

9 **county auditor at the airport office, but I was off**

10 **grounds, off site. And he said -- I don't remember**

11 **what he said, but not -- he would take care of it,**

12 **something to that effect, you know. So we**

13 **weren't -- all the interviews would have to go**

14 **through the front office is what we were told if**

15 **they wanted to speak to us; they would arrange for**

16 **the interviews.**

17 Q When you say "the front office," you mean --

18 **A The sheriff's administration office, yes.**

19 Q And I assume there haven't been any such

20 interviews. Right?

21 **A No. Not with the county auditors, no.**

22 Q And is that because Sheriff Clarke --

23 **A I don't know.**

24 Q -- made a decision?

25 **A I'm not privy to that information.**

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1 all I have.

2 (Proceedings concluded at 9:52 a.m.)

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1 STATE OF WISCONSIN)

) SS:

2 COUNTY OF MILWAUKEE)

3

4

5 I, SARAH A. HART, RPR, RMR, CRR, and
6 Notary Public in and for the State of Wisconsin, do
7 hereby certify that the above deposition was
8 recorded by me on May 17, 2017, and reduced to
9 writing under my personal direction.

10 I further certify that I am not a
11 relative or employee or attorney or counsel of any
12 of the parties, or a relative or employee of such
13 attorney or counsel, or financially interested
14 directly or indirectly in this action.

15 In witness whereof, I have hereunder set
16 my hand and affixed my seal of office at Milwaukee,
17 Wisconsin, this 24th day of May, 2017.

18

19

20

21

Notary Public

In and for the State of Wisconsin

22

23

24

My commission expires: October 6, 2018

25

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